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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/101,846 07/17/98 FINZEL

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MM91/0104

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EXAMINER

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HENRY, J	ART UNIT	PAPER NUMBER
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2872

DATE MAILED:

01/04/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/101,846

Applicant(s)

Lothar Finzel et al

Examiner

Jon W. Henry

Group Art Unit

2872



☒ Responsive to communication(s) filed on Jan 2, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE (3) month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 2-47, 49, 50, 52, 53, and 56-73 is/are pending in the application.

Of the above, claim(s) 2-47, 49, 50, 52, 53, and 56-71 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 72 and 73 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☒ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Withdrawal of Finality of the Rejection in the Last Office Action

1. The finality of the rejection in the last Office action has been withdrawn and a new THREE MONTHS shortened statutory period for response set based on the previous Office action, item no. 1, page no. 2, failing to reference MPEP 806.05(c) Section III of the MPEP with regard to the elected invention. Other than corrections in that regard made in item no. 2 below, this Office action is identical to the previous Office action.

Election/Restriction

2. Applicant's election with traverse of Group I and species (a) in Paper No. 13 is acknowledged again. The requirement for restriction remains FINAL. Claims 2-47, 49, 50, 52, 53, and 56-71 stand finally withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions.

In accordance with applicant's amendments to the claims and the last Office action, claim 73 (similar to previously amended claim 1) is a generic linking drawn to an invention that may be termed Bbr. Claim 72 is directed to an invention Bsp. The other claims related to those claims are directed to various combinations of features that may be generally considered ABbr (related to claim 73) and Absp (related to claim 72). Restriction as set out in the last Office action was appropriate as set out in MPEP 806.05(c) Sections I and III (see item no. 1, page no. 2 of the Office action mailed August 1, 2000.). Applicant's argument, page 5, 11, that "even if generic claim 73 is rejected," the various nonelected dependent claims should be examined is not

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persuasive. See, e.g. MPEP 806.04(d) and MPEP 809. If the mere drafting of a nonallowable linking claim could support rejoinder, restriction would be useless because an applicant may always draft a nonallowable linking claim. The issue is whether an *allowable* linking claim is present.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 72 and 73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 73 falls apart in the last six lines. For example, “said cables,” “the optical-fibre cable” and “the optical cable” appears without proper antecedent, the last also appearing to be improper singular language.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 72 and 73, as far as definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' own admitted prior art in view of Finzel (GB 2277812 A).

Claim 1 is written in Jepson format, presumable in accordance with 37 CFR 1.75(e):

Where the nature of the case admits, as in the case of an improvement, any independent claims should contain in the following order: (1) A preamble comprising a general description of all the elements or steps of the claimed combination which are conventional or known, (2) A phrase such as "wherein the improvement comprises," and (3) Those elements, steps and/or relationships which constitute that portion of the claimed combination which the applicant considers as the new or improved portion.

Although the conventional aspects of the prior art as presumably set out in the preamble of claim 1 may take many forms, it appears reasonable, based on such a presumption, for purposes of visualization the general arrangement of applicants' Fig. 6 may be considered solely with regard to structures of the preamble of claim 1. It would have been obvious to one of ordinary skill in the art to use cable lead-in units with lead-in spigots in the form of pipes of the type of pipes 5 of Finzel because Finzel discloses such with regard to cable inlet nozzles. The one-piece construction of pipes 5 with the closure as shown by Finzel is deemed to be a construction "tightly fitted on the closure body," in fact, about as tightly as possible. Alternatively, if somehow the construction were somehow deemed not tightly fitted, it would have been obvious to one of ordinary skill in the art to make the pipes 5 separately because such is conventional in devices including projecting pipe or tube sections and such would avoid problems of one-piece construction. Additionally, that

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finding of obviousness is in close accord with case law regarding the obviousness of "making separable." In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961). One would expect such a pipe to be tightly fitted to seal properly. Also, ~~it would have been obvious to connect a pipe holding fiber cables loosely to such a pipe because Finzel teaches such loose holding of cable 7 and pipe 25 with pipe section 5, the "loosely" being applicable whether or not an optional bushing of the type of 26 is provided. Although Finzel does not how pipe 25 is secured to pipe section 5, adhesive bonding would have been obvious as a conventional securing means that would assure the desired relationship at all times during shipping and use regardless of tolerances of manufacture.~~

Response to Arguments

7. Applicants' arguments in the remarks are at least partly not understood because of the problems of indefiniteness and lack of antecedent basis set forth in the rejection under 35 USC 112, 2nd paragraph, above. Additionally, applicants' remarks in the paragraph bridging pages 4 and 5 do not track the exact claim language and therefore the examiner relies on the prior art rejection above with regard to the rejection of the claimed subject matter. The statement of page 5, lines 4-5, "It is noted that in the British Reference, the cable 7 is a flexible member that does not have a pipe," appears to be in error. Elements 25 of Finzel are described on page 4 of Finzel as "pipes" connected with pipe structures of elements 5 of the enclosure of Finzel, the teachings of Finzel related thereto would have made obvious modifications of the admitted prior art as set forth in the prior art rejection above.

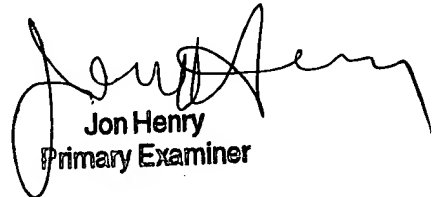
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Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon W. Henry whose telephone number is (703) 305-6106.


Jon Henry
Primary Examiner

jwh

January 2, 2001